

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JUSLENE LAPAIX,)
A214-708-017,)
and)
DORELAS DORILUS,)
Plaintiffs,)
v.) Cause No. _____
ALEJANDRO MAYORKAS, Secretary)
of the Department of Homeland Security,)
and)
MICHAEL JAROMIN, as District)
Director, USCIS,)
Defendants.)

COMPLAINT FOR MANDAMUS

COMES NOW Plaintiffs Juslene Lapaix and Dorelas Dorilus, by and through counsel, and in support of their claim for relief state as follows:

INTRODUCTION

1. This is a civil action brought pursuant to 8 U.S.C. § 1329, 28 U.S.C. § 1331 and 1361 to redress the deprivation of rights, privileges and immunities secured to Plaintiffs by which statutes jurisdiction is conferred, and to compel Defendants to perform a duty Defendants owe to Plaintiffs.
2. This action is brought to compel Defendants and those acting under them to rule upon the Petition for Alien Relative (I-130) filed by Plaintiff Dorelas (MSC-18-902-13165, **Exhibit A**) and the Application to Register Permanent Residence or Adjust Status

(Form I-485) filed by Plaintiff Lapaix (MSC-18-902-13164, **Exhibit B**) which were filed concurrently on or about November 7, 2017.

PARTIES

3. Plaintiffs Juslene Lapaix and Dorelas Dorilus reside in St. Louis, Missouri. Plaintiffs are persons of good moral character and upstanding members of the community. Plaintiff Juslene Lapaix is the beneficiary of a pending Petition for Alien Relative (Form I-130) filed by Plaintiff Dorelas Dorilus, her United States Citizen spouse. This I-130 was filed on November 7, 2017, along with her own Application for Adjustment of Status (I-485). The petition and application have been pending before the USCIS for more than three (3) years.

4. Defendant Alejandro Mayorkas is the Secretary of the Department of Homeland Security (DHS), with direct administrative and supervisory control of the United States Citizenship and Immigration Services (USCIS), a Federal Agency within the United States Department of Homeland Security, which is mandated under the law to supervise, implement, and enforce the Immigration and Nationality Act, including Petitions for Alien Relative and Applications to Register Permanent Residence or Adjust Status, the type of filings involved in this case, and is charged under the law (8 U.S.C. Section 1103) with administering the Immigration and Nationality Act (INA). Defendant Michael Jaromin is the District Director of the Kansas City District of USCIS and is charged under the law (8 U.S.C. Section 1103) with administrating the INA. The Kansas City District of USCIS includes the St. Louis Field Office, which adjudicates petitions from aliens residing in St. Louis. Mr. Jaromin's office has supervisory control of the petition and application and has authority to adjudicate them. The Petition for Alien Relative

(Form I-130) and Application to Register Permanent Residence or Adjust Status (Form I-485) were originally filed with the USCIS National Benefits Center (Receipt Nos. MSC-18-902-13164 and MSC-18-902-13165) and transferred to the control of the Kansas City District office (St. Louis Field Office) sometime after filing. The case remains pending.

JURISDICTION

5. This Court has jurisdiction over the present action under 28 U.S.C. Section 1331, Federal Question Jurisdiction (this action being one that arises under the Constitution and the laws of the United States, specifically the Immigration and Nationality Act (INA), Section 245, et seq. [8 U.S.C. Section 1255, et seq.], 5 U.S.C. Section 555 et seq., and the Fifth Amendment to the U.S. Constitution; 28 U.S.C. Section 1651, the All Writs Act, 28 U.S.C. 1346, the Federal Tort Claims Act, 28 U.S.C. Section 2201, the Declaratory Judgment Act; 5 U.S.C. Section 702, the Administrative Procedures Act; 28 U.S.C. Section 1361, regarding the action to compel an officer of the United States to perform his duty; and 8 U.S.C. Section 1329, the INA for jurisdiction of this court over actions arising under said Act.

VENUE

6. 28 U.S.C. Section 1391(e), as amended, provides that in a civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity, or under color of authority, or any agency of the United States, the action may be brought in any judicial district in which the defendant in the action resides. Defendant USCIS is an agency which operates within the district, having a district office in Kansas City, MO which is under the direct authority of Defendant Jaromin as Director. Defendant Michael Jaromin has authority in this capacity over the

St. Louis Field Office of the USCIS, to which the Plaintiffs' I-130 petition and I-485 application were transferred, and which considers cases filed by citizens and aliens residing in the Eastern District of Missouri. Venue properly lies with the Eastern District of Missouri, United States District Court.

PRELIMINARY STATEMENT

7. Plaintiff Dorelas Dorilus and Juslene Lapaix filed, as provided by law, a Petition for Alien Relative (Form I-130) and an Application to Register Permanent Residence or Adjust Status (Form I-485) on or about November 7, 2017. Defendants have engaged in unlawful conduct. Defendants have refused to adjudicate Plaintiffs' Petition and Application without regard to when they were filed. A reasonable processing time for like applications is between eight to twelve months. However, Plaintiffs' petition and application have been held without adjudication for over *three years* without justification.

FACTUAL ALLEGATIONS

8. On or about November 7, 2017, Plaintiffs filed a Petition for Alien Relative (Form I-130) and an Application to Register Permanent Residence or Adjust Status (Form I-485) with Defendants.

9. Plaintiffs filed the relevant paperwork pursuant to the provisions of the Immigration and Nationality Act (INA). An interview was conducted on the underlying marriage at the St. Louis Field Office on September 24, 2018 (**Exhibit C**). The matter has now been pending for more than three years since filing, and for almost 2 ½ years after interview.

10. Despite repeated attempts by Plaintiffs to secure adjudication, Defendants have not adjudicated the Petition nor the Application in more than three years since they were filed.

11. Plaintiffs' Petition and Application have not been adjudicated in more than three years. USCIS' stated goal for the processing of like petitions is six months. The average processing time for the adjudication of Form I-485 is between 14 to 27 months – certainly, exceeding this period by nearly two years is unreasonable. Defendants have engaged in unlawful conduct by refusing to adjudicate Plaintiff's Application.

PRAYER FOR RELIEF

Defendants willfully and unreasonably have delayed and have refused to adjudicate the Petition for Alien Relative (Form I-130) and the Application to Register Permanent Residence or Adjust Status (Form I-485) filed on or about November 7, 2017. Therefore, Plaintiffs have been deprived of the right to have their filings adjudicated and to obtain the Lawful Permanent Residence status and that peace of mind to which Plaintiffs are entitled under the Immigration and Nationality Act. Defendants owe Plaintiffs the duty to act upon the Petition and Application in question and they have unreasonably failed to perform that duty. Plaintiffs have exhausted any administrative remedies that may exist.

WHEREFORE, Plaintiffs pray that the Court:

- (1) Accept and maintain continuing jurisdiction of this action;
- (2) Compel Defendants and those acting under them to perform their duty to act upon the Petition for Alien Relative (Form I-130) and Application to Register Permanent Residence or Adjust Status (Form I-485) within the next sixty (60) days;

- (3) Award Plaintiffs the cost of this action, including fair and reasonable attorney's fees as provided in the Equal Access to Justice Act; and
- (4) Grant such other and further relief this Court deems proper under the circumstances.

Respectfully submitted,

/s/ Timothy E. Wichmer

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